

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0368 ST
Sales and Use Tax
For The Tax Periods: 1994 through 1996

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ISSUE

Sales/Use Tax – Manufacturing Equipment Exemption: Photography Backdrops, Stools, and Props.

Authority: IC 6-2.5-5-3, 45 IAC 2.2-5-8, Information Bulletin #34, *Mid-America Energy Resources v. Indiana Department of State Revenue* 681 N.E.2d. 259 (Ind.Tax 1997), *Department of State Revenue v. Cave Stone* 457 N.E.2d. 520 (Ind. 1983)

Taxpayer protests the assessment of sales/use tax on backdrops, stools and props used in professional photography.

STATEMENT OF FACTS

Taxpayer is in the photography business. Taxpayer photographs individual school portraits, senior portraits, team portraits and custom portraits for its customers.

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, "an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

Taxpayer purchased backdrops, stools, and other props for use in setting for customer's portraits. This equipment is tangible personal property and subject to Indiana sales and use tax. Taxpayer argues that these items were purchased for direct use in the direct production of photographs sold at retail to their customers and therefore exempt from sales and use tax.

Pursuant to IC 6-2.5-5-3(b), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. Taxpayer argues that backdrops, stools and other props are used directly in the direct production of photographs.

Taxpayer cites Information Bulletin #34; taxpayer contends that its backdrops, stools, and other props should be considered part of "cameras and related photographic equipment" as provided by the exemption set forth in the bulletin. Backdrops, stools, and props are incidentally used during photography but they are not included in "cameras and related photographic equipment." The exemption described in Information Bulletin #34 is not intended to extend to incidental items used in the settings for photography.

Citing *Mid-America Energy Resources v. Indiana Department of State Revenue* 681 N.E.2d. 259 (Ind.Tax 1997) and *Department of State Revenue v. Cave Stone* 457 N.E.2d. 520 (Ind. 1983), taxpayer argues that the backdrops and props are necessary to create a new and marketable product. As exemplified by taxpayer's use of outdoor scenery as a background, it is clear that backdrops and props are not necessary to create a marketable product.

Even if these backdrops and props were needed to create a marketable product, their use must also be essential and integral to the production of photographs. Taxpayer contends that this equipment is an essential and integral part of the production process. Although the backdrops and props provide aesthetic value to the photographs produced in the eyes of the customer, they do not serve an essential function in producing the photograph. Photographs can be produced and sold regardless of the background or props involved. The essential and integral parts of the taxpayer's production process only include the equipment needed to produce photographs, not the items or equipment used for background or aesthetic value.

FINDING

Taxpayer's protest is denied.